



Proposed Regulation Agency Background Document

Agency name	Virginia Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-405
Regulation title	Regulations for the Application of Fertilizer to Nonagricultural Lands
Action title	This new regulation seeks to prescribe training and application requirements for contractor-applicators and licensees who apply fertilizer on non-agricultural land.
Date this document prepared	May 18, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The regulation is designed to ensure that contractor-applicators and licensees who apply fertilizer on nonagricultural land are properly trained and certified in order to minimize the potential environmental impact that may result from the improper application of fertilizers.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

“Contractor-applicator” means any person required to hold a permit to distribute or apply fertilizer pursuant to § 3.2-3608 of the Code of Virginia.

“Licensee” means the person who receives a license to distribute fertilizer under the provisions of Chapter 36 of Title 3.2 of the Code of Virginia.

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 686 of the Acts of the 2008 General Assembly amended the fertilizer statute. §3.2-3602.1 of the Code of Virginia authorizes and requires the Board of Agriculture and Consumer Services to adopt regulations to certify the competency of contractor-applicators and licensees who apply fertilizer to nonagricultural lands. The authority is mandatory.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This regulation is intended to address the growing concern over the environmental impact of off-target applications of fertilizer on impervious surfaces that result primarily from lawn care activities. The Board of Agriculture and Consumer Services is required to promulgate this regulation which the General Assembly has deemed necessary in order to minimize the potential environmental impact that may result from improper use and over application of fertilizer on nonagricultural lands. Such impact is of particular concern with respect to water quality. This regulation seeks to improve the water quality in streams and rivers of the Commonwealth, as well as the Chesapeake Bay, through the establishment of training, certification, and recordkeeping requirements that will ultimately impact the flow of excess nutrients into those bodies of water. At present, there are no such training, certification, and recordkeeping requirements for contractor-applicators or licensees.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The proposed regulation sets forth the application process to become a certified fertilizer applicator, the general knowledge requirements for certified fertilizer applicators, the core areas on which applicants for certification will be tested, and the certification renewal process. The proposed regulation also sets forth the qualifications for trained applicators and the recordkeeping requirements for the application of fertilizer. The proposed regulation also prescribes the penalties that may be assessed for violations of the regulation.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of this regulation to the public, VDACS, and the Commonwealth is that it will serve to address the growing concern over the environmental impact of off-target applications of fertilizer on impervious surfaces that result primarily from lawn care activities. The expected reduction in excess nutrient run-off will have a beneficial impact on the quality of the water in Virginia's streams, lakes, and rivers, and ultimately, on the environmental health of the Chesapeake Bay. This regulation will not pose a disadvantage to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal requirements that are applicable to the proposed regulation.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board of Agriculture and Consumer Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board of Agriculture and Consumer Services is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to:

Robert E. Bailey
 Program Manager, Office of Product and Industry Standards
 Virginia Department of Agriculture and Consumer Services
 102 Governor Street
 Richmond, VA 23219
 Telephone: (804) 786-2476
 Fax: (804) 786-1571
 E-mail: Robert.Bailey@vdacs.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>VDACS has not received appropriations to carry out the provisions of Chapter 686 of the 2008 Acts of Assembly. Thus, the regulation was drafted so as to allow VDACS to carry out this mandate utilizing existing resources. One-time and ongoing expenses related to this regulation will be absorbed by VDACS.</p>
<p>Projected cost of the <i>new regulations</i> or</p>	<p>Localities will not incur costs as a result of this</p>

<p>changes to existing regulations on localities.</p>	<p>proposed regulation.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>The proposed regulation will affect contractor-applicators and licensees.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are approximately 1,000 contractor-applicators and licensees registered with VDACS. VDACS estimates that there are several hundred unregistered applicators that would be required to comply with the regulation. The vast majority of the entities affected by this regulation are small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Affected businesses will incur costs associated with the completion of Board-approved training for certified fertilizer applicators and with the completion of individual applicator training. These costs will vary depending on the number of employees. The initial certified fertilizer applicator training is estimated to cost \$500 per individual, and the continuing education requirement is estimated at \$100 every two years. The individual applicator training is estimated at \$50 per individual. Affected businesses will also incur costs associated with the maintenance of records regarding training and actual applications of fertilizer. Depending on the number of employees and the number of applications conducted, the cost for compliance by small businesses is estimated at \$1,200 annually.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Improved water quality through the reduction of excess nutrient run-off resulting from improper application of fertilizer to non-agricultural land.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Promulgation of this regulation is required by statute.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Promulgation of this regulation is required by statute.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No public comments were received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulation will have no impact on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	This section provides definitions for specific terms used throughout the regulation.	Va Code Sec. 3.2-3606 Va Code Sec. 3.2-3608	This section provides an explanation of specific terms used throughout the regulation.
20	This section requires licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural land to employ or retain the services of a certified fertilizer applicator. This section also prescribes requirements regarding fertilizer application and recordkeeping. This section also provides who may apply fertilizer to nonagricultural land for commercial purposes.	Va Code Sec. 10.1-104.2	The requirements proposed in this section are intended to ensure that the individuals applying fertilizer to nonagricultural land for commercial purposes have received training or are applying fertilizer under the supervision of an individual who has received training so as to minimize improper application of fertilizer.
30	This section establishes the qualifications for certification as a certified fertilizer applicator.	None	This section requires that individuals desiring certification as a certified fertilizer applicator successfully complete Board-approved training.
40	This section establishes the application process for certification, the appeal process for individuals denied certification, and the length of time a certification remains valid.	Va Code Sec. 2.2-4000 et seq. (VA Administrative Process Act)	This section describes the information an applicant for certification must submit to the Commissioner. This section also provides the opportunity to appeal a denial of certification. This section establishes that a card will be issued upon certification.
50	This section lists those individuals who are exempt from certification.	None	This section exempts specific individuals from certification.
60	This section establishes the general knowledge requirements for certified fertilizer applicators, as well as continuing education requirements.	None	This section is intended to ensure the environmentally safe use of fertilizer by requiring applicants for certification to demonstrate their practical knowledge of

			the use and handling of fertilizer.
70	This section establishes the process for renewing certification.	None	This section establishes that certification is valid for four years. This section also prescribes the application process for certification renewal. This section prescribes that an application for renewal may be submitted during the 60 days prior to the expiration of the certificate. This section also provides a 60-day grace period during which an application for renewal may be submitted following the expiration of the certification.
80	This section establishes the qualifications for trained applicators.	None	This section enables non-certified applicators who are not under the direct on-site supervision of a certified fertilizer applicator to apply fertilizer for commercial purposes to nonagricultural land if they have successfully completed individual applicator training.
90	This section establishes requirements for recordkeeping regarding trained applicators.	None	This section requires licensees and contractor-applicators to maintain training records for those employees who are trained applicators to ensure these employees apply fertilizer properly.
100	This section establishes requirements for recordkeeping regarding the application of fertilizer to nonagricultural land.	None	This section requires the maintenance of records containing specific information regarding each commercial application of fertilizer to nonagricultural land to assist the Commissioner in identifying potential off-target or otherwise improper applications of fertilizer.
110	This section establishes penalties for non-	Va Code Sec. 3.2-3621	This section authorizes the Commissioner to assess

	<p>compliance with the regulation.</p>		<p>monetary penalties for non-compliance and provides the Commissioner with the option to cancel the violating party's certification. These penalties are intended to encourage compliance by individuals who intend to apply or supervise the application of fertilizer on nonagricultural land.</p>
--	--	--	---